



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Dependable Contractors, Inc.

File: B-223434

Date: July 9, 1986

DIGEST

Protest that agency improperly awarded contract while appeal of size determination was pending is dismissed because there is no requirement that agencies withhold award under such circumstances.

DECISION

Dependable Contractors, Inc. (Dependable) protests the award of contract No. N62472-86-C-0061 by the Navy for the repair of the aircraft ramp area at the U.S Naval Air Facility, Detroit, Michigan. The contract was solicited as a small business set-aside; Dependable's bid was rejected when the Chicago regional office of the Small Business Administration (SBA) determined that the protester was not a small business. Dependable appealed this determination to SBA's Office of Hearings and Appeals and contends that the Navy improperly awarded the contract while its appeal was pending.

The information Dependable submitted with its protest shows that, following bid opening, its size status was protested by Artco Contracting, Inc., the second low bidder. Pursuant to the Federal Acquisition Regulation, 48 C.F.R. § 19.302 (1985), the contracting officer referred the matter to the SBA. Under the regulatory provision applicable to that situation, award was not to be made until the SBA made a size determination or until 10 business days expired since the SBA's receipt of the protest, whichever occurred first. 48 C.F.R. § 19.302(h). In fact no award was made until the contracting officer was notified by SBA's regional office that Dependable was not a small business.

Dependable's protest concerns subsequent events. Following notice of SBA's action, Dependable appealed the decision and, while its appeal was pending, learned that the Navy had awarded the contract to Artco. Dependable claims that this action was improper. The cited regulation, however, does not require agencies to withhold award pending resolution of appeals from initial size determinations. Rather, agencies may rely on the initial SBA determination to make award. JRR Construction Co., Inc., B-220592, Oct. 24, 1985, 85-2 CPD ¶ 383. Consequently, the Navy's award of the contract while the appeal was pending was proper.

The protest is dismissed.

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